

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**R.W., Appellant**

**and**

**U.S. POSTAL SERVICE, MIDTOWN STATION,  
Atlanta, GA, Employer**

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**Docket No. 11-2029  
Issued: May 14, 2012**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 12, 2011 appellant filed a timely appeal from an August 8, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. Because more than 180 days has elapsed between the last merit decision dated January 14, 2011 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the August 8, 2011 nonmerit decision.

**ISSUE**

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On August 30, 2010 appellant, then a 50-year-old clerk, filed a traumatic injury claim alleging that on August 28, 2010 she sustained right hand spasms and neck pain due to her putting up certified letters.

In support of her claim, appellant submitted medical evidence. In an August 24, 2010 verification of treatment, Purnima R. Rao, a treating physician, diagnosed right hand tendinitis. Dr. Joseph G. Saulsbury, a treating physician, in an August 30, 2010 physician's activity status report (Form CA-20), diagnosed cervical strain, lateral epicondylitis and trapezius/rhomboid strain.

By correspondence dated September 7, 2010, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the type of medical and factual evidence required to support her claim and given 30 days to provide the requested information.

In response to OWCP's September 7, 2010 letter, appellant submitted an August 30, 2010 report from Dr. Saulsbury diagnosing a cervical strain. Dr. Saulsbury attributed this condition to an August 28, 2010 employment injury involving repetitive work of keying in and transferring mail.

By decision dated October 15, 2010, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish a causal relationship between the diagnosed condition and the identified employment factor.

OWCP subsequently received appellant's statement, medical evidence and her requests for reconsideration.

In an October 11, 2010 patient care and summary report, Dr. Brian Vanderhoof, a treating Board-certified physiatrist, provided physical findings and a history of the employment injury. Diagnoses included right lateral epicondylitis and right cervical myofascial pain. In an October 12, 2010<sup>2</sup> duty status report, he diagnosed cervical pain and indicated that appellant was disabled from working. Dr. Vanderhoof noted that the injury was sustained on August 28, 2010 as a result of appellant writing up a whole tray of notices for certified mail.

By merit decision dated January 14, 2011, OWCP denied modification.

On July 25, 2011 appellant requested reconsideration and submitted evidence to support her request. The evidence consisted of a March 21, 2011 work restriction note from Dr. Maurice Jové, a treating Board-certified orthopedic surgeon, who indicated that she was not to perform any repetitive movement and no lifting more than three pounds with the right arm.

By decision dated August 8, 2011, OWCP denied reconsideration of the merits of appellant's claim.

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<sup>2</sup> The form noted the date of the examination as October 11, 2010.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>3</sup> OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) submit relevant and pertinent new evidence not previously considered by OWCP.<sup>4</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>5</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>6</sup>

### **ANALYSIS**

Appellant claimed that on August 28, 2010 she sustained right hand spasms and neck pain as a result of writing up certified letters. OWCP denied the claim on the grounds that the record was devoid of any medical evidence establishing a causal relationship between her diagnosed condition and the writing up of certified letters on August 28, 2010. The issue to be resolved on appeal is whether appellant advanced relevant legal argument not previously considered by OWCP, submitted relevant pertinent new evidence or showed that OWCP erroneously applied or interpreted a point of law.

The underlying issue is whether appellant has established that her right hand spasms and neck pain was causally related to his employment. Appellant's July 25, 2011 request for reconsideration neither alleged, nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. The only new evidence submitted by appellant is a March 21, 2011 work restriction note from Dr. Jové noting work restrictions. This note is not pertinent new and relevant to the underlying issue because it does not address appellant's claimed condition. The Board has held that the submission of evidence which does not address the underlying issue involved in the case does not constitute a basis for reopening the claim.<sup>7</sup> As appellant has not satisfied any of the criteria, the Boards notes that OWCP did not abuse its discretion in refusing to reopen her claim for a review on the merits.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at anytime on her own motion or on application.

<sup>4</sup> 20 C.F.R. § 10.606(b)(2). *See J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>5</sup> *Id.* at § 10.607(a). *See S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>6</sup> *Id.* at § 10.608(b). *See Y.S.*, Docket No. 08-44 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

<sup>7</sup> *See S.J.*, Docket No. 08-2048 (issued July 9, 2009); *L.H.*, 59 ECAB 253 (2007); *D'Wayne Avila*, 57 ECAB 642 (2006).

**CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 8, 2011 is affirmed.

Issued: May 14, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board